

PARADIGM WIRELESS SYSTEMS

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 1, 1995

Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

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**Re: Broadband PCS Auctions, PP Docket No. 93-253--
January 10, 1995 Erratum/Unjust Enrichment Rule Change**

Dear Chairman Hundt:

Paradigm Wireless Systems ("Paradigm") was created in 1994 by a group of African-American businessmen for the purpose of participating in the development of Broadband PCS systems. For the reasons discussed below, I am writing this letter to express Paradigm's concerns regarding the rule change announced on January 10th in an Erratum (released by the Wireless Telecommunications Bureau) revising the so-called unjust enrichment provisions contained in 47 C.F.R. Sections 24.712 (d)(1)-(d)(2), adopted in the Commission's Fifth Memorandum Opinion and Order in Docket No. 93-253 (Fifth MO&O).

Mr. Chairman, Paradigm's members have spent more than two years studying the feasibility of developing Broadband PCS systems, and following the FCC's development of rules and policies designed to encourage entities like Paradigm to participate in a meaningful fashion in the emerging wireless industry. Over the last eight months, we have worked diligently to obtain the necessary financial backing from other designated entities, institutional and individual investors, venture capital groups, and strategic partners. I am pleased to report that we have made substantial progress in identifying potential sources of funds and initiating negotiations with interested entities.

It is our overwhelming belief, already borne out in some of our most recent negotiations, that much of that progress will be lost if the Commission does not promptly revisit the Bureau's changes, withdraw the Erratum, and reinstate the unjust enrichment provisions originally adopted in the Fifth MO&O. Indeed, we believe that the Erratum rule change will directly inhibit designated entity ("DE") participation in the broadband PCS licensing process.

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We understand that the revised "recapture" provision is designed to assure that DEs, having received as much as a 25% bidding credit, do not unjustly benefit from this credit by selling out of the business and reaping the value of the credit prematurely. This policy may appear appealing, but the fact is that by extending the recapture period to the full license term, DE control group investors will be denied any realistic opportunity to obtain liquidity for their investment, a result that is clearly inconsistent with business investment reality.

Furthermore, there is strong evidence to suggest that the recapture policy is based on an erroneous premise-- that DE licenses will be purchased at a discount price below fair market value. This was not, however, the case in the recently concluded regional narrowband PCS auction, and there is no reason to believe that DE applicants will pay anything less than full market value for licenses (after netting out the applicable credit). Under such circumstances, imposition of a ten-year unjust enrichment provision is clearly not justified. Indeed, it would result in the imposition of a "premium" or "tax" on the "gross" value of the license for transfers/assignments at any time during the initial license term.

Ironically, the Commission has recognized that there are legitimate business reasons why a DE or members of its control group may want or need to assign/transfer its interests in a broadband PCS license prior to the end of the ten-year license term. While the Commission has appropriately chosen to limit the mandatory holding period to five years (three years for transfers to other DEs), the Erratum's change to the unjust enrichment rule will make the "five-year" holding period entirely illusory. Rather than reaching an appropriate balance between the need to ensure that DEs retain de facto and de jure control with the need to provide the flexibility required for DEs to attract capital, the punitive aspects of the unjust enrichment rules announced in the Erratum will effectively force DEs to hold their interest for the full ten-year period without regard to legitimate business considerations; importantly, the ten-year rule also makes it virtually impossible for such DEs to raise capital from investors who, quite appropriately, require some level of liquidity, without such penalties. In this regard, we note that the Commission limited the narrowband unjust enrichment provision to a five-year period, in apparent recognition of these considerations.

In conclusion, we want to emphasize that these are not merely hypothetical concerns. We are encountering real difficulties in obtaining the necessary financing as a result of the ten-year rule and suspect that others are encountering similar problems. In our view, the ten-year unjust enrichment period directly and negatively impacts the Commission's stated objectives. The reinstatement of the five-year unjust enrichment rule will benefit DEs and assist these entities in attracting necessary capital to participate in the broadband PCS auctions. We urge the Commission to reinstate the five-year unjust enrichment provision contained in its Fifth MO&O.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ernest G. Green', with a long horizontal line extending to the right.

Paradigm Wireless Systems
Ernest G. Green
Chairman

cc: Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness